Before the
Federal Communications Commission
Washington, D.C.

In the Matter of	)	
Amendment of Section 73.202(b),	)	MB Docket No. 02-136
Table of Allotments,	)	
FM Broadcast Stations	)	
(Arlington, The Dalles, Moro, Fossil, Astoria,	)	
Gladstone, Tillamook, Springfield-Eugene,	)	
Coos Bay, Manzanita and Hermiston, Oregon	)	
and Covington, Trout Lake, Shoreline, Bellingham,	)	
Forks, Hoquiam, Aberdeen, Walla Walla, Kent,	)	
College Place, Long Beach and Ilwaco, Washington)	)	

ORIGINAL

To: The Commission

REPLY TO OPPOSITION OF JOINT PETITIONERS

Triple Bogey, LLC; MCC Radio, LLC and KDUX Acquisition, LLC (together "Triple Bogey") herein reply to the Opposition of Mid-Columbia Broadcasting, Inc. and First Broadcasting Investment Partners, LLC (together "Joint Petitioners") to Triple Bogey's Application for Review.

Triple Bogey's Application for Review focuses on three issues: (1) whether the Joint Petitioners' proposal to move Station KMCQ, The Dalles, Oregon, to Covington, Washington, should be dismissed in light of the Joint Petitioners' abandonment of that proposal in favor of a conflicting proposal to relocate KMCQ to Kent, Washington, which they thereafter also abandoned; (2) whether the Joint Petitioners' plan to relocate KMCQ should be denied because it will result in the loss of the only radio service currently available to approximately 1,800 persons, and (3) whether Triple Bogey's otherwise superior allotment proposal to move Station KDUX-FM from Aberdeen, Washington, to Shoreline, Washington, should be dismissed because Station KAFE(FM), Bellingham, Washington, might be required to use a directional antenna to protect Canadian allotments, even though (i) use of that antenna would result in no loss of the area or population KAFE serves within the United States and (ii) Saga previously had consented, in its agreement with the Joint Petitioners, to use

exactly such an antenna. The Joint Petitioners' Opposition addresses all three issues; the separate Opposition of Saga Broadcasting, LLC ("Saga") addresses only the third. Because of the five-page limitation Section 1.115(f) imposes, this Reply addresses only the Joint Petitioners' arguments on the first two issues. Triple Bogey's separate Reply to Saga will address the third issue.

A. Having Refused to Comply with the Commission's Show Cause Order, the Joint Petitioners Should Not Be Permitted to Resurrect the Abandoned Covington Proposal

The Joint Petitioners initially proposed to relocate KMCQ from The Dalles, Oregon, to Covington, Washington. On the counterproposal deadline, in this proceeding, they joined with Saga to file a new proposal, asking to move KMCQ to Kent, Washington, instead of Covington. At the time, the Joint Petitioners expressed no continuing interest in the previous Covington proposal. The Joint Petitioners, with Saga, vigorously prosecuted the Kent proposal for nearly two years. Indeed, on March 3, 2004, they requested expedited processing of the proposal. Only nine days later, the Commission's staff issued an *Order to Show Cause* (DA 04-607, released March 12, 2004), which directed Saga to show cause why the KAFE license should not be modified to accommodate Triple Bogey's Shoreline allotment proposal. Noting that the modification of KAFE Triple Bogey sought was consistent with the modification contemplated in the agreement between Saga and the Joint Petitioners, the order directed Saga and the Joint Petitioners to disclose the consideration that Saga was to receive under that agreement.

Defying the Commission's order, the Joint Petitioners and Saga declined to disclose the information and abruptly abandoned the Kent proposal.[1] Neither the Joint Petitioners nor Saga presented any reason for doing so. While Saga and the Joint Petitioners were free to drop their Kent

[1] Saga submitted a copy of the two agreements comprising its agreement with the Joint Petitioners, but only to the Commission and not the parties to this proceeding as the *Order to Show Cause* required. Saga requested confidential treatment of the agreement documents, which request Triple Bogey opposed. To date, the Commission has not ruled on Saga's request.

proposal, that action did not give the Joint Petitioners license to resurrect their long-dead Covington proposal. Certainly the refusal to comply with a Commission order is not a "subsequent event" justifying reinstatement of a proposal abandoned nearly two years earlier. By filing the Kent proposal, the Joint Petitioners made clear they no longer were interested in providing Covington with a local transmission service. Their suddenly rekindled allegiance to Covington constitutes nothing more than gamesmanship, prejudicial to the other parties to this proceeding who have adhered to the Commission's directives. The Joint Petitioners should not be permitted to play fast and loose with their promises to provide local service. The Joint Petitioners' supposed commitment to provide Covington with a local broadcast service – abandoned in 2002 and belatedly resurrected in 2004 only when it served the Joint Petitioners' tactical purposes – cannot be respected. The Joint Petitioners should be dismissed.[2]

B. Relocation of KMCQ Will Mean the *Actual* Loss of the Only Service Available to 1,800 Persons.

The Joint Petitioners do not dispute that, with the relocation of KMCQ to Covington, some 1,800 persons currently within the KMCQ primary service contour will be left with ***no*** radio service. Actual service to this population would be restored in a piecemeal fashion only when, if ever, new

[2] In their Opposition, Joint Petitioners point to the Taccoa, Georgia proceeding (MM Docket No. 98-162). The *Report and Order* in that proceeding, 16 FCC Rcd 14069 (Chief, Allocations Branch, 2001), adopted the initial proposal of Southern Broadcasting of Pensacola, Inc. ("Southern") to relocate a station from Taccoa, Georgia, to Sugar Hill, Georgia, making no mention of the fact that Southern, through a counterproposal to its own proposal, sought to move the station instead to Lawrenceville, Georgia. On reconsideration, Southern urged that its counterproposal be adopted. In a subsequent *Memorandum Opinion and Order*, the Commission stated the counterproposal had not been considered in the context of the *Report and Order*. 16 FCC Rcd 21191, ¶ 2 (Chief, Allocations Branch, 2001). The clear implication was that the counterproposal simply was overlooked in the preparation of the initial *Report and Order*. The Taccoa proceeding provides no support for the proposition that if a party abandons a counterproposal to its own initial proposal, that party may thereafter return to its original proposal.

stations begin operating on five vacant allotments, including three proposed in this proceeding. Nonetheless, the Joint Petitioners repeatedly assert their proposal will create no unserved areas, stating the loss of existing radio service is cured simply by the *creation* of new vacant allotments. According to the Joint Petitioners, if an area "is located within the theoretical service contour of a vacant allotment, it is *not* a white area." Opposition at p. 3 (emphasis added). The Joint Petitioners' theory fails to give cognizance to the bedrock doctrine that the withdrawal of existing service is not in the public interest. *E.g., Hall v. FCC*, 237 F.2d 567 (D.C. Cir. 1956); *Modification of FM and TV Authorizations to Specify a New Community of License*, 5 FCC Rcd 7094, 7097 (¶ 19) (1990) (hereinafter "*Community of License II*"). If KMCQ were relocated as proposed, 1,800 persons would have no access via radio to local, regional or national news or to warnings regarding weather emergencies or natural disasters.[3] It would be of little solace to those persons that, at some point in the indefinite future, someone might build a new station to provide service.

The Joint Petitioners argue that *Community of License II* deals only with the loss of a community's transmission service, not a population's loss of its only reception service. The language of *Community of License II* clearly belies that assertion. In that proceeding, the Commission stated that, in considering whether to permit an existing station to change its community of license, the expectation that existing service will continue is a factor that must be weighed "independently against service benefits that may result from realloting a channel from one community to another, regardless of whether the service removed constitutes a transmission service, a *reception service*, or both." *Community of License II*, 5 FCC Rcd at 7097 (emphasis added). The Commission further specifically stated that replacement of an operating station with a vacant allotment or an unconstructed permit

[3] The volcanic explosion of Mount St. Helens, located approximately 65 miles from The Dalles, comes to mind.

"does not adequately cure the disruption to 'existing service' occasioned by removal of an operating station." *Id.*

The Joint Petitioners point to *Greenup, Kentucky*, 6 FCC Rcd 1493 (1991), to support the assertion that, in FM allotment proceedings, the Commission simply assumes that service will be provided on existing vacant allotments. The argument is not well-founded. *Greenup* dealt with the provision of *new* service to underserved areas, not the withdrawal of *actual over-the-air* service from areas with little or no other reception services. The Joint Petitioners cite no case in which the Commission permitted a station, in order to relocate to another community, to withdraw the only service available to a population as large as 1,800 persons. Furthermore, since *Greenup* was decided in 1991, the Commission's application process for vacant FM allotments has changed significantly. No longer may a party simply file an application. Instead, a prospective applicant must wait until the Commission puts the allotment up for auction. Given the significant backlog of vacant FM allotments, if the Joint Petitioners' proposal to relocate KMCQ were adopted, it would be years before the "fill-in" allotments would be filled and actual service would be restored to the real-life white areas created. In light of the loss of actual service that would result, the Joint Petitioners' proposal would not result in a preferential arrangement of allotments.

WHEREFORE, in light of all circumstances present, Triple Bogey's Application for Review should be GRANTED.

TRIPLE BOGEY, LLC, MCC RADIO, LLC and KDUX ACQUISITION, LLC

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CERTIFICATE OF SERVICE

I, Janice M. Rosnick, do hereby certify that I have on this 22nd day of September, 2004, caused to be hand delivered or mailed via First Class Mail, postage prepaid, copies of the foregoing REPLY TO OPPOSITION OF JOINT PETITIONERS to the following:

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